

GOODWILL EXCLUDED FROM SALES FACTOR

Notice #12-05

Franchise and Excise Tax

May 2012

**Highlights**

- *Goodwill must be excluded from numerator and denominator of the sales factor*

- *Goodwill "throwout" rule applies to tax years ending on or after June 10, 2011*

INTRODUCTION

This notice is intended to provide taxpayers and the general public with information concerning the sale of goodwill as it relates to the receipts factor of the standard apportionment formula, which is used to apportion net worth and net earnings to Tennessee.

DISCUSSION

Public Chapter 467 (2011) amended Tenn. Code Ann. §§ 67-4-2012 and 67-4-2111 as it relates to sales of goodwill. Effective June 10, 2011, taxpayers using the standard apportionment formula must exclude from both the numerator and the denominator of the apportionment formula receipts factor any gain on the sale of an asset that is designated as goodwill and required to be reported for federal tax purposes as Class VII assets.

When assets that constitute a trade or business are sold, Internal Revenue Code Sections 1060 and 338(b)(5) require that the sales price be allocated among the assets. Federal form 8594 is the asset allocation statement that is attached to the federal income tax returns (Forms 1040, 1041, 1065, 1120, 1120S, etc.) of both the buyer and the seller. This form categorizes the deemed or actual assets transferred into seven classes, with the correlating allocated sales price reported for each class. Goodwill is reported as a Class VII asset.

Public Chapter 467 (2011) requires that the gain on the sale of goodwill, reported as a Class VII asset, be excluded from both the numerator and the denominator of the apportionment formula receipts factor. This law change is effectively a "throwout" provision that excludes any recognition of the sale of goodwill in the sales factor of the standard apportionment formula. Rather, the sales factor includes the sale of the underlying real, tangible, and intangible assets of the business. The change is effective for all tax years ending on or after June 10, 2011.

**References:**

T.C.A. § 67-4-2012
T.C.A. § 67-4-2111
P.C. 467 (2011)

The information provided here is current as of the date of publication but may change as a result of new statutes, regulations, or court decisions. While this notice is intended to be comprehensive, events and situations unanticipated by this notice may occur. In such cases you should contact the department or your tax professional for further guidance.